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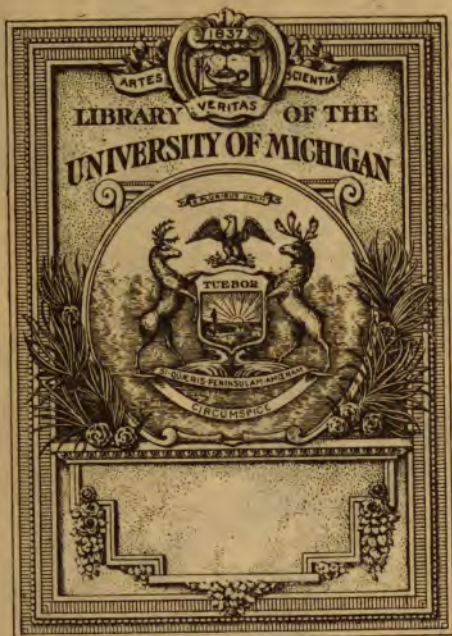
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THE GIFT OF
N. Y. Guaranty Trust Co.

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1917

The Federal Estate Tax Law and Regulations

(United States Inheritance Tax)

Act of September 8, 1916
Amended March 3, 1917



Guaranty Trust Company of New York
140 Broadway

FIFTH AVE. OFFICE
Fifth Ave. & 43rd Street

PARIS OFFICE
Rue des Italiens, 1 & 3
(Opens about June, 1917)

LONDON OFFICE
32 Lombard St., E. C.

44

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Revised 3-7-29 M V P.
4-10-79
Guaranty Trust Co. of N.Y.

FOREWORD

THE Federal Estate Tax Law of September 8, 1916, was amended by the Act of March 3, 1917. This Amendment affects only the rate of tax on estates of decedents dying on or after March 3, 1917.

The net estate of every resident decedent and the net estate situated within the United States of every nonresident decedent dying on or after September 9, 1916, is subject to the provisions of the Federal Estate Tax Law and liable for the payment of the tax thereby imposed.

**Estates
Subject to
Tax**

The rate of tax varies according to the amount of the *net* estate and increases progressively from 1% on estates of \$50,000, to 10% on estates in excess of \$5,000,000 of decedents dying prior to March 3, 1917, and from 1½% on estates of \$50,000 to 15% on estates in excess of \$5,000,000 of decedents dying on or after March 3, 1917.

Rate of Tax

The following tables show the rate of tax, the amount of net estate, and the amount for which the estate is liable.

Decedents
Dying Prior
to March 3,
1917

(1) Estates of decedents dying *prior* to
March 3, 1917:

1%	on first	\$50,000 =	\$500
2%	" next	100,000 =	2,000
3%	" "	100,000 =	3,000
4%	" "	200,000 =	8,000
5%	" "	550,000 =	27,500
6%	" "	1,000,000 =	60,000
7%	" "	1,000,000 =	70,000
8%	" "	1,000,000 =	80,000
9%	" "	1,000,000 =	90,000
10%	" all amounts in		

excess of \$5,000,000

Decedents
Dying on or
after March
3, 1917

(2) Estates of decedents dying *on or after*
March 3, 1917:

1½%	on first	\$50,000 =	\$750
3%	" next	100,000 =	3,000
4½%	" "	100,000 =	4,500
6%	" "	200,000 =	12,000
7½%	" "	550,000 =	41,250
9%	" "	1,000,000 =	90,000
10½%	" "	1,000,000 =	105,000
12%	" "	1,000,000 =	120,000
13½%	" "	1,000,000 =	135,000
15%	on all amounts in		

excess of \$5,000,000

Assessment
Based on
Net Estate

The figures given above are based upon a *net* estate; that is, an estate from which there have been deducted the *allowable deductions* and, in the case of an estate of a resident decedent, the *specific exemption* of \$50,000.

Net Estate

Net estate subject to tax is determined by deducting certain items from the gross estate of the decedent.

The gross estate, as defined by the statute, **Gross Estate** includes:

1. All property, real or personal, tangible **Property in Charge of Executor** or intangible, coming into the hands of the executor or other in charge of the estate, which property would be subject to charges against the estate, expenses of administration, and distribution to the heirs or legatees;
2. Property transferred without valuable **Transfers in Contemplation of Death** consideration in contemplation of or intended to take effect at or after death;
3. Decedent's share in money or property **Interests Held Jointly or in Entirety** owned by decedent jointly with another or with others in entirety, unless it can be shown that such interest was never owned by the decedent.

In determining the net estate of resident decedents the following deductions from gross **Deductions, Resident Decedents** estate are allowed:

- Funeral expenses.
- Administration expenses.
- Claims against the estate.
- Unpaid mortgages.
- Losses not compensated by insurance.
- Support of dependents during the settlement of the estate.
- Other charges allowed by the laws of the jurisdiction under which estate is administered.

**Specific
Exemption**

In addition to the above deductions, a specific exemption of \$50,000 is allowed to the estates of resident decedents.

**Deductions,
Nonresident
Decedents**

The above items, except the specific exemption of \$50,000, may also be deducted from the value of that part of the gross estate of a nonresident decedent which, at the time of his death, is situated in the United States, in such proportion as the value of such part bears to the value of the gross estate, wherever situated, of such nonresident decedent.

For example: a nonresident dies leaving a total estate of \$200,000, of which \$100,000 is represented by property in the United States. The total expenses of the estate under the items enumerated above as deductions amount to \$20,000. The estate would, therefore, be allowed to deduct that proportion of \$20,000, which \$100,000, the value of the estate in the United States, bears to \$200,000, the total value of the estate, i. e., one-half of the total expenses amounting to a deduction of \$10,000. This estate would accordingly be taxed on \$100,000, the value of the estate in the United States, less \$10,000, the total deductions allowed, i. e., \$90,000.

Within thirty days after qualifying or after coming into possession of any property of a decedent, an executor or other person coming into the possession of an estate must give written notice to that effect to the Collector of Internal Revenue.

**Thirty-day
Notice**

A return of the estate, on Form 706, as provided by the Regulations of the Treasury Department, must be made by the executor or other person coming into the possession of the estate: (1) in the case of a resident decedent, if the estate is subject to tax or if the gross estate at the time of the death of the decedent exceeds \$60,000, and (2) in the case of the estate of a nonresident, if any part of the gross estate is situated in the United States, regardless of amount.

Return

**When
Required**

This return, if the decedent was a resident of the United States, shall be filed with the Collector of Internal Revenue for the district in which the decedent was domiciled; if the decedent was a nonresident, it shall be filed with the Collector of Internal Revenue for the district in which the gross estate of the decedent is situated in the United States, or, if such estate within the United States is situated in more than one district, it shall be

Where Filed

filed with the Collector of Internal Revenue, at Baltimore, Maryland.

Tax Due and Payable

The tax is due one year after decedent's death, and, except where a valid will of a testator provides otherwise, must be paid from the principal of the estate, by the executors or administrators, before distribution

Discount

is made to beneficiaries. A discount at the rate of 5% per annum is allowed if payment

Penalty for Nonpayment

is made prior to the time the tax is due. If the tax is not paid within ninety days after it is due, a penalty at the rate of 10% per annum from the date of decedent's death is added. If, however, failure to pay the tax when

Penalty for Nonpayment if Due to Unavoidable Delay

it is due results from inability to settle the estate because of necessary litigation or other unavoidable delay, the penalty will be assessed at the rate of 6% per annum from the date of

Lien

death. Unpaid taxes are a lien against the estate for ten years and may be recovered

Suit

by court proceedings to subject the property of the decedent to sale under judgment or decree of the court.

The Federal Estate Tax Law

Being Title II of "An Act to increase the revenue, and for other purposes", Approved September 8, 1916, as Amended March 3, 1917

Title II.—Estate Tax

SEC. 200. That when used in this title—

The term "person" includes partnerships, corporations, and associations;

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Maryland.

SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act (*and prior to March 3, 1917*), whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of \$50,000;

Two per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Three per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Four per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Definitions

"Person"

"United States"

"Executor"

"Collector"

Estates Subject to Tax

Tax Rates Decedents Dying Prior to March 3, 1917.

Five per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Six per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Seven per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Eight per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Nine per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Ten per centum of the amount by which such net estate exceeds \$5,000,000.

Amendment by Act March 3, 1917

SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One and one-half per centum of the amount of such net estate not in excess of \$50,000;

Three per centum of the amount by which such net estate exceeds \$50,000 and does not exceed \$150,000;

Four and one-half per centum of the amount by which such net estate exceeds \$150,000 and does not exceed \$250,000;

Six per centum of the amount by which such net estate exceeds \$250,000 and does not exceed \$450,000;

Seven and one-half per centum of the amount by which such net estate exceeds \$450,000 and does not exceed \$1,000,000;

Nine per centum of the amount by which such net estate exceeds \$1,000,000 and does not exceed \$2,000,000;

Ten and one-half per centum of the amount by which such net estate exceeds \$2,000,000 and does not exceed \$3,000,000;

Twelve per centum of the amount by which such net estate exceeds \$3,000,000 and does not exceed \$4,000,000;

Thirteen and one-half per centum of the amount by which such net estate exceeds \$4,000,000 and does not exceed \$5,000,000; and

Tax Rates
Decedents
Dying on
or after
March 3, 1917

Fifteen per centum of the amount by which such net estate exceeds \$5,000,000.

Sec. 301. That the tax on the transfer of the net estate of decedents dying between September eighth, nineteen hundred and sixteen, and the passage of this Act shall be computed at the rates originally prescribed in the Act approved September eighth, nineteen hundred and sixteen.

Sec. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated:

Gross Estate

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

**Property in
Charge of
Executor**

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

**Transfers in
Contempla-
tion of Death**

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

**Interests
Held Jointly
or in Entirety**

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed

**Situs of Prop-
erty owned
by nonresi-
dents**

to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

Net Estate **SEC. 203.** That for the purpose of the tax the value of the net estate shall be determined—

Residents (a) In the case of a resident, by deducting from the value of the gross estate—

Deductions Allowed (1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

Exemption (2) An exemption of \$50,000;

Non-Residents, Deductions Allowed (b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

When Tax Due **SEC. 204.** That the tax shall be due one year after the decedent's death. If the tax is paid before it is due a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid

Discount Allowed within ninety days after it is due interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum per annum from the time of the decedent's death until the cause of such delay is removed,

Penalty

and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax shall not be deemed necessary litigation.

SEC. 205. That the executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor, shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

**Executor's
Notice to
Collector**

Return

**Contents
of Return**

Return shall be made in all cases of estates subject to the tax or where the gross estate at the death of the decedent exceeds \$60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

**When
Return
Required**

SEC. 206. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon.

**Return
When Made
by Collector**

SEC. 207. That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount

**Payment of
the Tax**

Refund of Excess Tax Payments

Payment of Balance Due

Duplicate Receipts

Default in Payment of Tax

Property to Be Sold for Payment of Tax in Default

Equitable Contribution

of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 208. That if the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless

otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

SEC. 209. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

**Tax a Lien
for Ten Years**

If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

**When Trans-
feree or
Trustee
Liable for
Payment of
Tax**

SEC. 210. That whoever knowingly makes any false statement in any notice or return required to be filed by this title shall be liable to a penalty of not exceeding \$5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

**Penalty for
False
Statement**

Whoever fails to comply with any duty imposed upon him by section two hundred and five, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, fails to exhibit the same upon request to the Commissioner of Internal Revenue or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding \$500, to be recovered, with costs of suit, in a civil action in the name of the United States.

**Penalty for
Failure to
Give Notice
of Qualifying
or for Failure
to Make
Return**

**Laws Made
Applicable
Hereto**

SEC. 211. That all administrative, special, and general provisions of law, including the laws in relation to the assessment and collection of taxes, not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions.

Regulations

SEC. 212. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations, and prescribe and require the use of such books and forms, as he may deem necessary to carry out the provisions of this title.

APPENDIX

Federal Estate Tax Law Regulations and Decisions

Regulations No. 37, Governing the Collection of Estate
Tax, Under the Act of September 8, 1916

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 10, 1916.

Transfer of Net Estates Taxable where Decedent Died after Sept. 8, 1916

ARTICLE I.—Title II of the revenue act of September 8, 1916, levies a tax upon the transfer of net estates of decedents dying after the passage of the act—i. e., on or after September 9, 1916—whether the decedent be a resident or a nonresident of the United States.

Territory for Tax Levy. United States Defined for Purpose of This Tax

ART. II.—The United States is defined (section 200) as including continental United States, Alaska, and Hawaii. The tax is not imposed in Porto Rico or the Philippine Islands, but, under the definition of the title, the property in the United States of deceased residents of the islands is taxable as the property of nonresidents.

Exemption of \$50,000 for Estates of Residents

ART. III.—The rates of tax are set forth in section 201. In the case of the estates of all residents an exemption of \$50,000 is allowed in determining the value of the net estate. But in the case of nonresidents' estates, no exemption is allowed, the only deductions from the gross estate being a certain proportion of such charges and losses as are allowed estates of residents. (See Article IX.)

The Gross Estate

Gross Estate Defined. Property in Charge of Executors

ART. IV.—The gross estate of a decedent, as defined in section 202, includes:

(1) The entire estate of every kind, real, personal, and mixed, tangible and intangible property, coming into the hands of executors or administrators, or such as would legally come into their charge if executors or administrators were appointed, and which property would be subject to charges against the estate, expenses of administration, and distribution to the heirs or legatees. This would include insurance, not payable directly to a beneficiary named in the insurance contract, but passing as a part of the administered estate. It would include also the good will of claimant's business, if such good will possessed an actual monetary value.

Property Transferred by Deed of Trust, Gift, or Sale; when to be Included in Gross Estate

(2) All property transferred by decedent during his lifetime, but in contemplation of, or intended to take effect, at his death. This includes not only property transferred by an instrument effecting a final disposition of the transferor's death, but transfers of any kind, including gifts and sales that were not bona fide—i. e., made for an adequate consideration in money or money's worth—where it can be established that such transfers were made in contemplation of death. The law provides not only that all such transfers of any portion of decedent's property shall be included in the gross estate, but that all such transfers of material value made within two years prior to death shall be presumed to have been made in contemplation of death, and the burden of proving that they were not made in such contemplation and securing their exemption from tax is placed upon the beneficiary. Wherever, therefore, a collector or agent shall have knowledge of such a gift, "sale," or other transfer he shall require that it be returned as a part of the decedent's gross estate. All executors and administrators having knowledge of such transfers as are described in this paragraph are required by the law to set forth the facts upon their return of the estate (Form 706).

Investigation of Transfers Made More Than Two Years Prior to Decedent's Death

If, in the case of transfers made more than two years prior to decedent's death, the executors or administrators shall not include the value of the transfers upon the return of the estate, collectors shall not add such value to the gross estate until a thorough investigation has been made, all the facts have been ascertained, and the collector shall have satisfied himself that the transfers were actually made with the view of providing for the beneficiary after or because of decedent's death.

"Material" Transfers Made Within Two Years Prior to Death Required To Be Returned

In the case of transfers made within two years prior to decedent's death, it should be noted that if such transfers were made in contemplation of death they are to be included in the gross estate regardless of their value. It is only where the value is a "material part" of decedent's whole estate that the presumption is that they were made in contemplation of death. Where, therefore, an executor has made return and the collector finds that transfers of material value made within two years prior to decedent's death have been omitted, the collector shall require the executor to amend the return by including such transfers in the gross estate, unless the executor shall file conclusive evidence that the transfers were not made in contemplation of death.

Property Owned Jointly

(3) Decedent's share in joint bank accounts or in any other property owned by decedent jointly with another or with others as tenants in entirety. Only such part of such property as can be shown never to have been owned by the decedent can be excluded from his gross estate.

Gross Estate Where There Is No Executor

ART. V.—In the case of property of a decedent whose estate has no executor or administrator, all the property and interests of the decedent, including the interests described in paragraphs 2 and 3 above, will be aggregated to determine the gross estate. (See Art. XVII.)

Situs of Stock, Etc., Owned by a Nonresident

ART. VI.—In the cases of nonresident decedents, stock owned in a domestic corporation is to be treated as a part of the gross estate in the United States, Hawaii, or Alaska. Also such property and interests of a nonresident decedent as are described in paragraph 2 of this article [ART. IV.] are to be treated as part of the gross estate in the United States, Hawaii, and Alaska, if their situs was the United States, Hawaii, and Alaska, either at the time of making a transfer thereof, or at the time of decedent's death.

Income and Appreciation To Be Included in the Gross Estate

ART. VII.—Income earned during the settlement of the estate (in the case of a nonresident, income earned on the property situated in the United States, Hawaii, and Alaska) is also to be treated as a part of the gross estate. Also, any appreciation in values after the death of the decedent and prior to the distribution of the net estate is to be included in the gross estate on the return, since the tax attaches upon the transfer of the net estate and losses sustained during administration are deductible.

[Amended by Treasury Decision 2406, see page 32]

The Net Estate

Residents' Net Estates—Deductions From the Gross Estate—Funeral Expenses, Etc.

ART. VIII.—From the gross estate, determined as set forth in Articles IV to VII above, certain deductions are allowable, as follows:

In the cases of estates of residents:

- (1) Funeral expenses.
- (2) Legitimate administration expense.
- (3) Valid claims against the estate.

Mortgages

(4) Mortgages against decedent's property, but only such mortgages as were existent and unpaid at the time of

decedent's death. If in returning the gross estate only the net value to the estate of the mortgaged property is reported, the value of the mortgages can not be deducted, as, obviously, this would effect a double deduction.

Losses

(5) Losses of the estate arising during the legal period of administration and caused by fires, storms, shipwreck, or other unavoidable accident, or by theft. Only the net loss, after all compensations from insurance or otherwise have been credited can be deducted.

Support of Dependents

(6) Support of decedent's dependents during the legal period of administration. This can not be an arbitrary estimate, but must be limited to the amount actually paid by the executors or administrators to such persons as were dependent upon the decedent for support at the time of decedent's death.

Other Legal Charges—Exemption of \$50,000

(7) Such other legal charges against the gross estate as may be allowed in a court of competent jurisdiction.

(8) The specific exemption of \$50,000.

Nonresidents' Net Estates

ART. IX.—In the case of estates of nonresidents:

(a) From the gross estate situate in the United States, Alaska, and Hawaii, determined in the manner set forth in Article II, there may be deducted a proportionate share of all the expenses, losses, and charges enumerated in items 1 to 7, Article VIII above, equal to the share the whole gross estate in the United States, Alaska, and Hawaii is of the entire gross estate wherever situated.

Example: If the total gross estate wherever situated is \$1,000,000, and the share in the United States, Alaska, and Hawaii is \$100,000, and if the total of legal expenses, charges and losses is \$50,000, the share deductible from the gross estate within the United States, etc., is \$5,000. A synopsis of the correct return would read: Gross estate, \$100,000; legal deductions, \$5,000; net estate, \$95,000; tax due, \$1,400.

No Exemption for Nonresidents

(b) The exemption of \$50,000 to be taken in determining the net estates of residents does not apply, and no part of it applies, to the estate of a nonresident.

No Deductions for Nonresidents if Return Is Incomplete

(c) Furthermore, the law specifically provides (sec. 203) that if any deductions whatever are to be allowed from the gross estate of a nonresident decedent, the return filed by the executor or administrator must show not only the value of the gross estate situated in the United States, Hawaii, and Alaska, but also the value of all the property and interests, wherever situated, of the decedent.

30-Day Notice

ART. X.—In cases of estates in the hands of executors and administrators, the act requires—

Executors To File Notice of Appointment

(1) That within 30 days after the issuance by the court of letters testamentary or letters of administration a formal notice of such issuance be filed by the executors or administrators with the collector of the district in which decedent was a resident at the time of his death. (Form 704.)

Other Persons Taking Possession of Decedent's Property To File Notice

(2) That any person coming into possession, prior to the issuance of letters to executors or administrators, of any property of the decedent, shall, within 30 days from the day of acquiring possession, file a similar notice with collector. (Form 705.)

Donees and Transferees—Similar Notice Required

(3) The law contemplates also that all persons who shall have received within two years prior to the death of the decedent any material part of decedent's property, either as a gift in contemplation of death, or by a transfer intended to take legal effect at decedent's death, or by a so-called sale which was not a bona-fide sale for a fair consideration in money or money's worth, should file a similar notice with the collector within 30 days after the death of decedent. This is clearly indicated by section 202, paragraph B, of the act, wherein, for the purpose of tax liability, such gifts, transfers, and "sales" are held effective in every case as of the day of the donor's or transferor's death. With the notice to the collector, the donee or transferee may file such evidence as may be desired to establish whether the gift or transfer was in contemplation of, or intended to take effect at, the donor's or transferor's death, or whether the sale was bona fide. (Form 705.)

Duty of Beneficiaries Where There Is No Executor

(4) In the cases of estates where no executors or administrators come at any time into charge of the property, the burden of filing the 30-day notice is placed by the law upon the individual beneficiaries. Each such beneficiary having reason to believe that the total property of the decedent exceeds the gross value of \$60,000 or the net value of \$50,000, must file the 30-day notice with the collector within 30 days after coming into possession of any portion of the property. (Form 705.)

Where Notice for Nonresidents' Estates Shall Be Filed

ART. XI.—In the cases of the estates of nonresidents the above set forth requirements apply fully, except that the collector with whom any notice is to be filed is the collector in whose district the property liable for the tax is situated. If such property is located in more than one district the notice is to be filed with the collector at Baltimore, Md.

Collectors to Inform Executors as to Beneficiaries

ART. XII.—Whenever a collector, in the case of a given estate, receives the notice from a beneficiary and there are executors or administrators acting, he shall promptly inform the executors or administrators of the beneficiary's name and address, in order that the executor or administrator, in compliance with the provisions of section 205, may ascertain such facts with regard to the property possessed by the beneficiary as the executor or administrator is required to show upon his return.

Forms for Giving Notice

Executors or administrators will render this notice on Form 704. Beneficiaries will render the notice on Form 705.

The Return

Return to Be Made Within One Year After Decedent's Death—Tentative Return May Be Made

ART. XIII.—A return of the gross and net estate must be filed with the collector by the executor or administrator within one year after decedent's death and before distribution or tax payment is made. The return must be upon Form 706 and all information called for upon the blank return must be given. If the administration of the estate is in such incomplete condition that correct information as to the value of the net estate can not be given, a tentative return may be filed showing an estimate of the gross and net estate, and the tax due, and such estimated tax may be paid at the time the return is filed. The return must be made and filed with the collector in duplicate, one copy to be retained by the collector and one forwarded by him to the commissioner. Where a tentative return has been filed a final and complete return must be made on or before the date of final payment of the tax in full. Wherever there is a partial payment of tax in advance a tentative return must be filed before the collector will accept the partial payment.

When Estates of Residents Are Not Required to File Notice or Return

ART. XIV.—In the case of the estates of residents neither the 30-day notice or the return can be required, except where the gross estate, as defined in Articles IV to VII above, exceeds \$60,000, or the net estate, computed in accordance with Article VIII above, exceeds \$50,000. Wherever either of these conditions exists the 30-day notice and the return must be filed.

Every Nonresident's Estate Liable for Notice and Return

ART. XV.—The return is required of the estate of every nonresident leaving property within the United States, Alaska, or Hawaii, regardless of the amount of property so left.

When Beneficiaries Must File Notice and Return

ART. XVI.—In the case of estates having no executors or administrators, or where any part of the gross estate as defined in Articles IV to VII above passes other than in charge of executors or administrators, the act places upon the separate beneficiaries the precise duties with regard to the filing of the 30-day notice and the return and the payment of tax that are otherwise imposed on the executors and administrators. Each such beneficiary is as fully liable to all the penalties provided in the act as is the executor or the administrator. Where the property is held for the beneficiary by guardians, trustees, or fiduciaries, the 30-day notice and the return may be executed by such representatives of the beneficiary.

Collector to Make Final Returns Where There Is No Executor

ART. XVII.—Each beneficiary making return for any part of the estate tax is required by the law to give all the information possible regarding any part of the estate. The final and complete return, in cases where no executor or administrator acts, will be compiled by the collector from the several returns of the individual beneficiaries. After

having determined in this manner the total gross and net estate, the rate of tax, and the proportionate amount due from each beneficiary, the collector shall notify each beneficiary accordingly, and will enter upon the assessment list the amount of tax apportionable to each.

When no Return or When False Return Is Filed

ART. XVIII.—Where a return is materially false or incorrect, or where no return is filed, the collector or his deputy, after investigation, shall make the return and the commissioner shall assess the tax thereupon.

Cooperation of Collectors

ART. XIX.—When a beneficiary files with the collector in whose district he resides a notice of the receipt of property which discloses that the decedent was resident at the time of death in another collection district, the collector receiving the notice shall forward it to the proper collector and shall promptly inform the beneficiary as to the collection district in which return is required to be made and tax paid.

Where Returns of Nonresidents' Estates Are To Be Filed

ART. XX.—In the cases of the estates of nonresidents the above set forth requirements apply fully, except that the collector with whom the notice or return is to be filed is the collector in whose district the property liable for the tax is situated. If such property is located in more than one district, the notice or return is to be filed with the collector at Baltimore, Md.

Penalties

ART. XXI.—Two separate penalties are provided in connection with the 30-day notice and the return:

Five Thousand Dollars Penalty for False Statement

(1) For a false statement knowingly made in a notice or return the penalty is a fine not to exceed \$5,000, or imprisonment not exceeding one year, or both;

Five Hundred Dollars Penalty for Failure to File

(2) For failure, whether through neglect or otherwise, to file the notice or the return at the times required, a penalty of not exceeding \$500 to be recovered, with costs of suit, in a civil action in the name of the United States.

Payment of Tax

Tax Due One Year From Day of Decedent's Death —5 Per Cent. Discount for Advance Payment

ART. XXII.—Section 204 provides that the tax is due and payable one year from the day of decedent's death. Discount at the rate of 5 per cent. per annum is allowed for payment in advance. Thus, if the tax is paid two months before the due date, a discount of one-sixth of 5 per cent. of the total tax shown by the return as due is allowed.

Suit for Taxes 60 Days Overdue

ART. XXIII.—The law makes two provisions with regard to taxes delayed in payment beyond the due date:

(1) Where the delay exceeds 60 days beyond the due date, if the collector has reason to believe the payment is being arbitrarily withheld, or the Government is in danger of loss thereby, he shall report the facts to the commissioner, and with the approval of the commissioner, he shall then proceed in accordance with section 208 to report the facts to the United States attorney in order that action may be brought to subject the property of the decedent to be sold under judgment of the United States court.

Interest at 10 per Cent. or 6 per Cent. on Tax 90 Days Overdue

(2) Where the tax is delayed in payment more than 90 days after the due date interest begins to run at the rate of 10 per cent. per annum and is computed from the day of

the decedent's death to the day of payment. Provision is made, however, that if after investigation the collector determines the cause of the delay to be unavoidable, either because of necessary litigation or other condition beyond the control of those responsible for the payment of the tax, and the true tax can not, therefore, be determined, the interest shall be at the rate of 6 per cent. instead of 10 per cent. per annum, running, nevertheless, from the date of decedent's death.

Duplicate Receipt

ART. XXIV.—The tax may be paid to the collector or his deputy. The collector will issue a receipt in duplicate.

When Advance Payment Relieves From Interest

ART. XXV.—Where prior to final settlement of an estate the collector has accepted a tax payment which he deems sufficient fully to cover the estate's liability, such payment shall relieve from the accruing of further interest until such time, if ever, as it may be determined that the payment was insufficient. The collector shall then notify the persons liable for the additional tax, and interest at the rate of 10 per cent. per annum shall run upon the due tax from the date of the collector's notice and demand until the date of payment of the entire additional tax due.

Tax To Be Paid Before Distribution of Estate

ART. XXVI.—It is provided in the law (see sec. 208) that in every case, except where a valid will of a testator provides otherwise, the tax shall be paid from the corpus of the estate by the executors or administrators before distribution to beneficiaries is made.

Lien for 10 Years

ART. XXVII.—Any unpaid amount of tax due is a lien for 10 years upon all the property of the decedent. Under certain conditions outlined in the section 209 the lien may attach to the property of a trustee or transferee of decedent.

Administration Provisions

Powers of Investigation; Collectors, Agents, Etc.

ART. XXVIII.—Under section 210 of the act the commissioner, or any collector or law officer, or his authorized deputy or agent, has authority to examine any record, file, or paper containing, or supposed by the official to contain, any information concerning the estate of a decedent. Refusal to exhibit, upon the official's request, any such record, file, or paper renders the person having custody of the same liable to a penalty of not exceeding \$500, recoverable, with costs, in a civil action in the name of the United States.

Before, however, proceeding to report any such case to the United States attorney, the collector or agent should submit all the facts to the commissioner for advice.

Assessment, Etc.

ART. XXIX.—The present regulations No. 1 [general Internal Revenue regulations] will apply to methods of assessment and collection for the time being and until experience shall have demonstrated whether specific rules for the assessment and collection of this tax are required.

Claims

ART. XXX.—The present regulations regarding abatement and refund claims will also apply. Attention is called, however, to the provision of section 207, that where a tentative payment of tax is made, sufficient in the judgment of the collector at that time to cover all tax liability of the estate, and later it is found that there has been an overpayment, refund of the excess shall be made. This would apply regardless of whether the claim were filed within two years of date of tax payment.

W. H. OSBORN,
Commissioner of Internal Revenue.

Approved:
WM. P. MALBURN,
Acting Secretary of the Treasury

(Treasury Decision 2372)

Notice and Return by Beneficiaries Coming into Possession of any Property of a Decedent, where no Executor or Administrator of the Decedent's Property is Acting, or Prior to the Appointment of Executors or Administrators

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 25, 1916.

TO COLLECTORS OF INTERNAL REVENUE:

The subjoined extract from an opinion of the Solicitor of Internal Revenue, dated September 23, 1916, is published for the information of those concerned.

"The said law, the Revenue Act of September 8, 1916, Section 200, defines the term 'Executor' as meaning 'the executor or administrator, of the decedent, or, if there is no executor or administrator *any person* who takes possession of any property of the decedent.'

"Section 205 requires 'that the executor, within 30 days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector'; and that 'the executor shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth the value of the gross estate,' etc.

"Manifestly the purpose of the law is to secure such information and returns as will enable the Government to properly execute the law and collect such taxes as may be thereby imposed.

"In view of this uniform interpretation as to the requirement of notice and returns in all matters of revenue taxation, as well as the specific language of the law, I am of the opinion that you are justified in the preparation of regulations requiring persons who come into possession of the property of a decedent, or any part thereof, prior to the appointment of executors or administrators, to give due and proper notice to the collector of that fact. When executors or administrators are appointed they, of course, supersede all other persons in the control of the property whether such persons are in possession or not, and the duty of giving notice and making returns for the entire estate immediately devolves upon such executors or administrators."

APPENDIX

(Treasury Decision 2385) *Taxable Transfers*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 21, 1916.

SIR:

Replying to the inquiry in your letter of the 10th instant, you are informed that Paragraph B of Section 202, Title II, of the Act of September 8, 1916, provides for the inclusion in the gross estate of a decedent dying on or after September 9, 1916, of any interest of which the decedent "has, at any time, made a transfer" in contemplation of, or intended to take effect at or after, decedent's death.

This language is so specific that it hardly would seem open to question that Congress intended to include in the gross estate, not only such transfers including gifts and sales not bona fide made by instrument dated after September 8, 1916, or where the actual transfer took place after that date, but transfers of any kind made in contemplation of death at any time whatsoever prior to September 8, 1916. It is believed also that there is no question of the power of Congress to enact such revenue legislation. The test of the tax liability is not in such cases the date of the instrument making the transfer, or the date of the actual transfer, but the date of the death of the decedent.

(Treasury Decision 2395) *State Inheritance Taxes*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 17, 1916.

SIR:

Replying to your letter of the 14th instant inquiring whether state inheritance taxes are deductible from the gross estate of a decedent, in determining the federal tax due under Title II of the Revenue Act of September 8, 1916, you are informed that among the deductions from the gross estate specified in Section 203, Paragraph a, Subparagraph 1, of the above-mentioned Act, is the item "such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the

United States, under which the estate is being administered."

Since it does not appear open to question that state inheritance taxes are a primary charge against an estate and allowable as credits to executors and administrators in every state imposing such taxes, they are clearly deductible from the gross estate of the decedent whose property and interests are liable to the federal tax imposed in Title II of the Act of September 8, 1916.

(Treasury Decision 2406)

Income Earned after Decedent's Death and Appreciation in Values During Administration are not to be Returned as a Portion of the Gross Estate

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 2, 1916.

SIR:

Replying further to your letter of October 26, 1916, you are informed that Art. VII of Regulations 37 has been reconsidered and in view of an opinion of the Solicitor of Internal Revenue dated November 9th, sustained in an opinion of the Attorney General of November 29th, it is held that, for the purpose of tax under Title II of the Revenue Act, of September 8, 1916, the gross estate of a decedent must be based upon the value of the property at the time of decedent's death, and income earned after death and appreciation in values during administration shall be not returned for estate tax.

(Treasury Decision 2415)

Conditions Under Which Tentative Return may be Filed and Advance Tax Payment Accepted

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 14, 1916.

SIR:

Receipt is acknowledged of your report of the 7th instant with regard to the liability to estate tax of the estate of You make specific inquiry with regard to the allowance of certain estimated deductions

from the gross estate which were shown by the executor upon his preliminary return.

Section 204 of the taxing act, in which provision is made for the allowance of a discount of 5 per cent. for payment of tax before the expiration of one year from the death of the decedent, does not, of course, contemplate that, in order to take advantage of this discount, executors shall be permitted to make vague and inaccurate estimates of the value of the gross estate, or the extent of the legal deductions therefrom. If executors were permitted to make returns which were mere estimates it is obvious that they might oftentimes estimate the gross estate conservatively and estimate the deductions generously, or, at least, it could not be assumed that this had not been done, and it would, therefore, be necessary that in every case, after the final accounting of the executors, the Government should make a supplementary investigation to determine the true facts, since in the majority of the cases it would be probable that the tax had been underpaid in the first instance.

Section 205 provides for the filing of the return at such times and in such manner as may be required under the regulations promulgated by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, and it is obvious that the proper time for return to be made is a time coincident, as nearly as possible, with the final settlement of the estate and the date upon which the estate tax is due. Since in many States more than a year from the decedent's death is allowed for administration, the time set by the regulations for the filing of the return was made coincident with the due date of the tax—that is, one year after decedent's death.

Section 207 of the act relates primarily to the payment of the tax and not to the filing of the return, and it contemplates that, if at the time the tax is due it is impossible, because of delay in administration, for an exactly accurate return to be made, a tentative return may be filed and tax shown thereon to be due may be tentatively accepted by the collector. Neither section 205 nor section 207 contemplates that at any time return may be filed and tax paid without a reasonably approximate determination of the facts relating to the gross estate and the separate legal deductions.

Therefore, when application is made to collectors for authority to file returns within one year from the death of

the decedent whose estate is being returned, collectors will require that such tentative return be based upon determined or accurately determinable values of gross estate and items of deductions, and if the estate in question has not reached such a state of settlement that a reasonably accurate return can be made, advance payment of tax will not be accepted.

(Treasury Decision 2421)

Thirty-day Notice, Return, and Tax Payment required of Representatives in this Country of Non-residents where no Executor Acts Within the Required Time; also a similar Requirement in the Case of Fiduciaries holding Property of a Resident Where no Executor Acts

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 22, 1916.

TO COLLECTORS OF INTERNAL REVENUE AND REVENUE AGENTS:

Inquiry has been made of this office as to the liability under Section 205 of the Revenue Act of September 8, 1916, of representatives in this country of a nonresident decedent leaving property in the hands of the representatives, and where, so far as the representatives know, no executor has been appointed.

Section 205 of the Act requires that the "executor" within thirty days after qualifying as such, or after taking possession of any property of decedent whichever event first occurs, shall give notice to the proper collector, and that later the "executor" shall file return of the estate. Section 207 requires that the "executor" shall pay the tax to the proper collector or his deputy. In Section 200 the term "executor," as used throughout Title II is defined as meaning either the executor or administrator, or if there is none, "any person who takes possession of any property of the decedent."

In the instance cited to this office for ruling, it is argued that the representatives in this country of the nonresident decedent do not "take possession" of decedent's property, and that, since the representatives are neither administrators nor beneficiaries, they can not be required to file the thirty-day notice, or return, or make payment of the tax.

From this view the Government must dissent, for although there is no change of agent or representative, there is, immediately upon the nonresident's death, a complete change in the character of the agency. Prior to the death, the local representatives held the property in charge for the nonresident, but immediately the death has occurred, they hold subject to the order of executors or administrators, and for the beneficiaries legally entitled thereto. At the moment of death, there is, on the part of the local representatives, an actual legal taking of possession for succeeding owners; a change in the conditions of possession so complete that no actuality would be added by the substitution of other agents. It is clear, therefore, that, under the provisions of Title II, such representatives are responsible for the filing of the thirty-day notice and can be saved from this responsibility only if, prior to the expiration of thirty days from the death of the nonresident, the required notice has been filed by the executor or administrator.

Further weight is given to this ruling by a consideration of the very evident intent of Congress in its definition in Section 200 of the term "executor." This definition was given with the sole purpose of providing effective means for the ascertainment and collection of the tax due in every case where the complete facts might not be known to the executor or where the executor might be in a position successfully to evade his responsibilities under the taxing act. Obviously, the object on the part of Congress in causing "any person who takes possession of any property of the decedent" to share equally with executors and administrators the liability to render notice and return and pay the tax, was that there should not be, under any circumstances of transmission, a failure of the administrative power to secure a full disclosure of the facts and a complete satisfaction of the tax. Congress must have foreseen, in enacting the final paragraph of Section 202 that without such an administrative requirement as this, the tax due because of stock owned by a nonresident in domestic corporations could be successfully evaded. The definition of "executor" in Section 200 was made intentionally so broad that no property subject to the tax could escape taxation through any uncertainty as to the person liable for giving accurate information with regard thereto.

The thirty-day notice will, therefore, be required in every case of such representatives in the United States of

nonresident decedents, unless the representatives know that within thirty days after the death of the decedent the executor or administrator has filed the notice. Similarly, the return for the portion of the estate within their charge will be required of the local representatives within one year from the death of the decedent, unless the local representatives, prior to that time, have ascertained that the executor or administrator has filed the return. Similarly, tax payment will be required of the representatives out of the property in their charge, if payment has not been made before the due date by the executor or administrator. The penalty imposed in Section 210 for failure to fulfill these requirements is \$500, to be recovered with costs of suit in a civil action.

This ruling applies also with regard to certain property of residents, such as the decedent's interest in joint bank accounts or any other property owned jointly, or as tenants in entirety, and property conveyed by deed of trust. In such cases, the fiduciary holding for the succeeding beneficiary the decedent's share of the joint account, or other property jointly owned, or acting as trustee of property conveyed to beneficiaries by a deed of trust, is required to file the thirty-day notice and the return and make tax payment, unless, within the required periods, the requirements of the law have been otherwise fully satisfied.

(Treasury Decision 2449)

The Value of United States Bonds can not be Excluded from the Gross or Net Estate in Determining Estate Tax Due

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 13, 1917.

SIR:

Answering the question presented by * * * under date of the 10th instant, relative to the liability of estates to taxation under the recent Federal Estate Tax Act, it is manifest from the following decisions of the United States Supreme Court that U. S. Government bonds must be added to the value of estates for the purpose of taxation under said Act.

The U. S. Supreme Court in *Plummer vs. Coler* (178 U. S. 134), considering the question whether, under the inheritance tax laws of a State, a tax might be validly im-

posed upon a legacy consisting of United States bonds issued under a statute declaring them exempt from state taxation in any form, said:

"We think the conclusion, fairly to be drawn from the state and Federal cases, is, that the right to take property by will or descent is derived from and regulated by municipal law; that, in assessing a tax upon such right or privilege, the State may lawfully measure or fix the amount of the tax by referring to the value of the property passing; and that the incidental fact that such property is composed wholly or in part, of Federal securities, does not invalidate the tax or the law under which it is imposed."

And dealing directly with the power of the Federal Government under the Inheritance Tax Act of 1898, to impose legacy taxes upon the transmission of an estate consisting of "free-tax" Government bonds, the Court in *Murdock vs. Ward* (178 U. S. 147), referring to the discussion and decision in the *Plummer* case, held:

"If a state inheritance law can validly impose a tax measured by the amount or value of the legacy, even if that amount includes United States bonds, the reasoning that justifies such a conclusion must, when applied to the case of a Federal inheritance law taxing the very same legacy, bring us to the same conclusion. We must, therefore, hold that if, as held in *Knowlton vs. Moore*, the tax imposed under the Act of June 13, 1898, is not invalid as a direct, unapportioned tax, nor for want of uniformity, nor as an infringement upon the laws of the states regulating wills and descents, then the tax upon legacies or bequests, descendible under and regulated by state laws, is valid even if such legacies incidentally are composed of Federal bonds."

And further, in *Sherman vs. United States* (178 U. S. 151) the Court said:

"The proposition that bonds of the United States and the income therefrom are not lawfully taxable under an inheritance tax law of the United States, because exempted by contract from such tax, has just been decided *not to be well founded*."

This is clearly conclusive of the whole question.

*(Treasury Decision 2450)**Method of Determining Share in Community Property or Property Owned Jointly or in Entirety, to be Returned as a Portion of the Gross Estate of a Decedent Tenant*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 14, 1917.

SIR:

Receipt is acknowledged of your letter of the 6th instant calling attention to the report of the Revenue Agent, dated the 3rd instant, with regard to the liability to estate tax of the estate of . . .

You state that, under the Texas law, all property earned by a husband or wife during the period of their marriage is community property and owned jointly. The death of either does not affect the interest owned by the survivor; that is, this interest does not pass by inheritance. The public records in such cases may, however, be misleading because any conveyance, legally made to both, is apt to be recorded in the name of one, usually the husband. As a matter of fact, however, there is a legal presumption that the whole property conveyed to either is community, without reference to the manner of its acquisition. However, if property were purchased by the separate means or property of either, or were received by either as an inheritance, such property would not be community, but would be individual property, without reference to the manner in which the deed of conveyance is stated. Notwithstanding this, however, under the presumption of the Texas law, it would have to be considered community property until facts otherwise were developed.

In the case of the . . . estate, the Revenue Agent reported as belonging to the estate of the deceased husband, the entire property which the public records showed as in his name. The widow, who is also administratrix, stated to the Agent that the entire property so treated by the Agent as the gross estate of the deceased husband was, in fact, community property, but up to this time she has submitted no evidence substantiating this contention. While, for the purposes of local administration a presumption would be created by the local law in favor of the widow's contention in this case, such a presumption

does not rest in her favor so far as any responsibility or duty that may be imposed upon her by Federal Law is concerned. No State Statute of this character has any modifying effect whatever upon the explicit terms of a Federal Taxing Act. The Act of Congress of September 8, 1916, creates its own presumptions and defines explicitly the terms under which exemption from tax may be claimed. You will note that, under Section 202, Paragraph C, there is required to be included in the gross estate of a decedent all the interest held jointly or as tenants in the entirety by the decedent and another person, "except such part thereof as may be shown to have *originally* belonged to such other person and never to have belonged to the decedent." Under this paragraph of the taxing act, wherever the public records show property in the name of the decedent, the presumption is that it was the sole property of the decedent, and the burden of proving that another person owned, prior to the decedent's death, any interest therein is not upon the Government, but is upon the estate.

You will note the extremely limiting terms of the paragraph quoted above and that it must be shown that any part of the property to be excluded from the gross estate actually belonged in the first instance to a person other than the decedent and that it has never been owned by the decedent. If, under the Texas law, property conveyed to a husband or wife during their marriage is taken by each in entirety and in such a manner that it could not be contended that any specific part belonged to either, but that each was the owner of all, and upon the death of either no new interest or title vested in the survivor, as is the case in some states, the Government, under a strict and technical interpretation of Paragraph C of Section 202, would perhaps be justified in demanding that the whole of the property thus owned be included as a portion of the gross estate of the decedent. This, however, does not seem to have been the intent of Congress and it has heretofore been ruled in a similar case that one-half of the property, thus jointly owned, should be returned as a portion of the gross estate of the decedent husband or wife, as the case might be.

In the case of the estate, therefore, you should require of the administratrix in due time the return on Form 706 and therewith may be submitted any evidence available to the administratrix to establish that any part of the property included in the gross estate was actually com-

munity property of the decedent and his wife and that, therefore, but one-half thereof is to be treated as the estate of the decedent.

(Treasury Decision 2453)

The Deductions from the Gross Estate Provided in Section 203, Paragraph 1, are Limited to Amounts Allowed Under the Laws of the Local Jurisdiction

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1917.

SIR:

Receipt is acknowledged of your letter of the third instant quoting Section 203, paragraph 1, of the estate taxing act and inquiring whether the phrase, "such other charges against the estate as are allowed by the laws of the jurisdiction" is interpreted by the Bureau as limiting all the preceding clauses of the paragraph; that is, whether any amounts could be deducted from the gross estate because of funeral expenses, claims against the estate, losses, etc., which were in excess of the amounts allowable under the laws of the local jurisdiction.

While the punctuation and construction of the paragraph may not be absolutely conclusive upon this point, it is the opinion of this office that the limitation set up in the concluding part of the paragraph applies to all the items enumerated in the paragraph; that is, there could not be deducted from the gross estate in determining the net estate liable to tax any funeral or other expenses, or any losses and charges which were in excess of the amounts allowable under the laws of the local jurisdiction as credits to administrators or executors in their accounts in the probate courts.

It is so ruled.

*(Treasury Decision 2454)**Duties of Heirs, Donees, Trustees, Fiduciaries, Transfer Agents, and Others Having or Coming into Possession of Property of a Decedent Whose Estate is Liable for Estate Tax.*

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 28, 1917.

Section 200 of the revenue act of September 8, 1916, in defining the term "executor" as including, "if there is no executor or administrator, any person who takes possession of any property of the decedent," clearly intended to provide that wherever circumstances are such that the Government could not proceed against an administrator or executor for satisfaction of the requirements of the taxing act there shall be no failure, because of inability to hold others in possession responsible, to collect the whole tax due.

Careful consideration has been given in the light of this intent of Congress to the problem of determining how far the duties of filing 30-day notice and return and making tax payment may be left solely to duly appointed executors or administrators, and to what extent, in order to insure the collection of tax due, others in possession must be required to assume these responsibilities. As a result of this consideration the following supplemental regulations are promulgated, under authority of section 212 of the Act.

Estates of Resident Decedents

Thirty day notice (Form 705) must be filed, within 30 days after death of the decedent whose estate is taxable, by others than executors or administrators, as follows:

(1) By the surviving husband or wife, as the case may be, for one-half the value at the decedent's death, of community property owned by the decedent and the survivor.

(2) By the first taker after the decedent of any of decedent's real property where this passes, in accordance with the local law, directly to the heirs of decedent.

(3) By donees who have received within two years prior to the decedent's death any gift of material value from the decedent, or who have received at any time whatever gifts

made by decedent in contemplation of, or intended to take legal effect at, death.

(4) By trustees holding property conveyed during life time by the decedent in contemplation of death or with intent to provide for others than decedent at or after decedent's death, regardless of the date of the instrument making the conveyance, or the date of possession by the trustee, or the date of vesting of the right of survivors to possession or enjoyment at or after decedent's death.

(5) By fiduciaries holding property of any kind jointly or in entirety for the decedent and another or others

(6) By any other person, persons, joint-stock companies, corporations, or associations holding at, or taking immediately upon, decedent's death any property inclusive in the gross estate under the definition of section 202 of the taxing act, which property may not be taken in charge by decedent's executors or administrators, if any.

When the collector of internal revenue shall receive Form 705, filed as above required, he shall proceed as indicated in Article XII of regulations No. 37. If, at the expiration of one year from decedent's death, it has not been ascertained that an administrator or executor has been appointed for the decedent's estate, the collector will proceed to secure return and tax payment from the beneficiary or beneficiaries, in accordance with Article XVI and XVII of regulations No. 37.

Estates of Nonresident Decedents

The 30-day notice (Form 705) is required to be filed for all property of every kind, located or legally situate in this country (including Hawaii and Alaska), by those agents or representatives, donees, transferees, trustees, or fiduciaries of a decedent dying domiciled abroad, whether alien or citizen of the United States. The notice must be filed within 30 days from decedent's death with the collector of internal revenue in whose district the property within this country is situate, unless the local agent, etc., having the property in charge knows that there is other property of decedent located in another collection district, in which case the notice is to be filed with the collector of internal revenue, Baltimore, Md.

If it be not possible for the local agent, representative, etc., to file the notice within 30 days from death of the non-resident, the penalty denounced in section 210 will not be asserted if the notice is filed within 30 days from the

day upon which the local agent, representative, etc., receives information of the nonresident decedent's death.

Each collector receiving Form 705 showing property of a nonresident will immediately inform the commissioner of the fact. A record will be kept in the commissioner's office from which it can be determined whether Forms 705 for a given estate have been filed in more than one collection district, in which case the several collectors will be instructed to forward the Forms 705 to the collector at Baltimore, Md.

In due time, if the administrator or executor of the nonresident decedent has failed to file return as provided in section 203, paragraph (b), and pay the tax due, the collector shall require such return and tax payment from the local agent, representative, etc. No deductions whatever from the gross estate will be allowed in such a case unless all the property of the nonresident decedent is shown to be located in this country and it is established that all has been returned for estate tax. Where there is more than one holder in this country of decedent's property, the collector will aggregate the separate returns, proceeding in accordance with Article XVII of regulations No. 37.

Under no circumstances may the local agent, representative, etc., release to a foreign administrator or executor or a foreign beneficiary of the decedent any property within this country at the time of decedent's death until either (1) the tax due because thereof has been paid or (2) ancillary letters have been taken out in this country or otherwise provision has been made by the estate for the satisfaction of the tax lien resting upon the decedent's property in this country. When such ancillary letters have been taken out or such provision has been made, the local agent, representative, etc., shall immediately inform the collector fully as to the facts.

An administrator or executor acting in a foreign country will not be recognized as believing others in charge or possession of a decedent's property from responsibility for satisfying the requirements of the taxing act unless and until he has made return and tendered payment of all tax due. The penalty denounced in section 210 of the act will be asserted against every agent, representative, etc., in this country releasing to a foreign administrator or executor or beneficiary of the decedent the property within

this country, except where the requirements of this regulation have been complied with.

The above regulation fully applies to transfer agents of corporate stock or bonds, receiving into possession for transfer purposes such personalty of a nonresident decedent. The transfer shall not be effected or the stock or bonds released to the foreign administrator or executor or the succeeding beneficiary until the transfer agent shall have been fully assured either that the tax due has been paid or that ancillary letters have been taken out in this country or provision otherwise made for the satisfaction of the tax lien against the estate.

This ruling applies also to safe-deposit companies, warehouses, and similar custodians of property in this country of a nonresident decedent, to brokers holding as collateral securities belonging to a nonresident decedent, to banking institutions holding money of nonresident decedents on deposit or for any specific purpose, such as the purchase of goods, so long as the title rests in the nonresident decedent, his estate or his heirs, and to debtors in this country of nonresident decedents.

It does not apply to carriers of property of a nonresident decedent while such property is in their charge for the purpose of transit.

Form 704 (Thirty-Day Notice) is for Exclusive Use of Executors or Administrators

Replying to your letter of the 14th instant, you are informed that the mimeograph letter of February 6, 1917, published on page 36 of your War Tax Service is in error in stating that beneficiaries should file Form 704. The proper form is, of course, 705, Form 704 being for the exclusive use of executors or administrators.

Claims for Refund and Abatement of Taxes

REVISED STATUTES, SEC. 3220

The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or

collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty; Provided, That where a second assessment is made in case of a list, statement or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted nor shall taxes collected under such assessment be refunded or paid back, unless it is proved that said list, statement, or return was not false or fraudulent and did not contain any understatement or undervaluation.

Forms 46 and 47 on Which to Present Claims for Refund and Abatement of Taxes

Form 46

Claims for the refunding of assessed taxes and penalties must be made out upon Form 46. In this case, as in that of claims for abatement upon Form 47, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. The claim should be still further supported by an affidavit of the deputy collector of the proper division, and by the certificate of the collector. (Extract from Regulation No. 14, Revised, published October 15, 1911.)

Form 47

Claims for abatement of taxes or penalties erroneously or illegally assessed or which are abatable under remedial acts, etc., must be made out upon Form 47, and must be sustained by the affidavits of the parties against whom the taxes were assessed, or of other parties cognizant of the facts, and must be accompanied by affidavits of the deputy collectors of the divisions in which the claims arise. (Extract from Regulation No. 14, Revised, published October 15, 1911.)



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